IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 60 OF 2003

State of Goa
Through Public Prosecutor,
High Court of Bombay at
Panaji. ... Appellant

versus

Paulo Rebello,
s/o Joao Rebello,
r/o W.No.1055,
Ghotmorod Kakoda,
Curchorem, Goa. ... Respondent

Mr. S. N. Sardessai, Public Prosecutor for the State/ Appellant.

Ms. Helen Fernandes, Advocate for the Respondent.

CORAM : P. V. HARDAS, J.

DATE : 12TH FEBRUARY, 2004.

ORAL JUDGMENT

The State being aggrieved by the Judgment of the learned Judicial Magistrate First Class, Quepem, dated 13th June, 2003, in Criminal Case No.25/S/01/A, acquitting the Respondent/Accused for an offence

punishable under Sections 279, 304-A and 337 of the Indian Penal Code has filed the instant Appeal.

2. The facts in brief as are necessary for the decision of this Appeal are set out hereunder:-

P.W.14, A.S.I. Ramesh Prabhu, received an anonymous telephone call on 12th October, 2000, informing him about an accident which had taken place at Borimol, Quepem, between a mini bus bearing registration No.GA-02-T-4425 and a Maruti Car bearing registration No.GA-02-J-2385. On receipt of the said information, P.W.14, A.S.I. Ramesh Prabhu, registered an offence vide No.56/2000. Exh.37, an extract of the station diary, evidences the receipt of the telephone call by P.W.14, A.S.I. Ramesh Prabhu. P.W.14, A.S.I. Ramesh Prabhu, then proceeded to the scene of the accident. The injured were shifted from the mini bus to PHC, Canacona. A scene of offence panchanama at Exh.PW1/A came to be drawn in the presence of P.W.1, Madhukar Hegde. P.W.14, A.S.I. Ramesh Prabhu, then, vide Exh.38, lodged a formal complaint. The Accused came to be arrested on 12th October, 2000. The Inquest Panchanama vide Exh.39 came to be drawn. After completion of the investigation, a charge-sheet against the Respondent/Accused came to be filed by P.W.15, P.I. Haresh Madkaikar.

3. The particulars of the offence vide Exh.5 came to be explained and the Accused pleaded not guilty. The prosecution in support of its case examined 15 witnesses. The defence of the Accused as is apparent from answer to Question No.11, is that on account of the breaking of the steering rod the mini bus went on the right side of the road causing the accident.

4. Mr. S. N. Sardessai, learned Public Prosecutor appearing on behalf of the State/Appellant has urged that the learned Trial Court has given undue weight to the defence of the Accused, which defence the Accused has not been able to establish. According to the learned Public Prosecutor appearing on behalf of the State/Appellant, the reasoning of the learned Trial Court in acquitting the Accused is wholly unsustainable.

5. Miss Helen Fernandes, learned Counsel appearing on behalf of the Respondent and who has very ably argued the Appeal has urged that the defence of the Accused is not an afterthought and is borne out from the evidence of P.W.4, John D'Costa, who at the relevant time was working as a conductor. According to the learned Counsel appearing on behalf of the Respondent, the fact that the steering column was

damaged is borne out from the evidence of P.W.9, Ramesh Shirodkar, a Motor Vehicle Inspector, who vide his Report at Exh.24 has stated about the damage to the steering column. It is also urged by the learned Counsel appearing on behalf of the Respondent that this being an Appeal against acquittal and the view of the learned Trial Court not being perverse, this Court should not interfere in an Appeal against acquittal.

6. The fact of the accident, the death of the driver of the Maruti Car and the injuries to the occupants of the Maruti Car and the mini bus have not been seriously challenged. The defence of the Accused is that the accident occurred on account of the breaking of the steering column. The prosecution has examined P.W.4, John D'Costa, who was at the relevant time, a conductor in the bus driven by the Accused. In the examination-in-chief itself, he states that after the accident, he had asked the driver(Accused) as to how the accident had occurred and the Accused had told him that as the steering rod of the bus broke, the vehicle went towards the right side. P.W.4, John D'Costa, further states that he personally checked and found that the steering rod was damaged. In the cross-examination, on behalf of the Accused, he has admitted as true that the accident took place only because the steering rod of the bus was broken and

after the accident, the bus went on the right side though, the Accused tried to stop it. This witness has given admissions favourably to the Accused in his examination-in-chief itself. No endeavour was made by the prosecution to cross-examine the witnesses vis-a-vis his statement under Section 313 of the Code of Criminal Procedure. That being the position, the evidence of this witness clearly supports the defence of the Accused that the accident occurred on account of the breaking of the steering column.

7. The evidence of P.W.9, Ramesh Shirodkar, a Motor Vehicle Inspector, corroborates the evidence of P.W.4, John D'Costa, that the steering rod was damaged. The Certificate in this behalf, issued by P.W.9, Ramesh Shirodkar, is at Exh.24.

8. P.W.5, Santonu Dessai, a passenger travelling in the bus also admits in the cross-examination that after the accident, he had learnt that some part of the steering wheel of the said bus had broken. He has further admitted that the bus suddenly swerved to the right side of the road. He has also admitted that some people were talking about the accident occurring on account of the breaking of some part of the steering wheel.

9. In the light of this evidence, therefore, the learned Trial Court recorded a finding of not guilty and acquitted the Accused as the defence of the Accused that the accident had occurred on account of the breaking of the steering column had been established. No rash or negligent act is attributed by the prosecution to the Accused in respect of the breaking of the steering column. The Motor Vehicle Inspector examined by the prosecution also does not depose that the damage was caused to the steering column on account of the impact of the accident. The learned Trial Court has given the benefit of doubt to the Accused and has acquitted him.

10. With the assistance of the learned Counsel for the parties, I have perused the evidence and I find that the view taken by the learned Trial Court is a possible view to be taken on the basis of the evidence on record. There is no perversity in the reasoning of the learned Trial Court to warrant any interference in an Appeal against acquittal. That being the position, the Appeal is devoid of any merit and the same is dismissed.

P. V. HARDAS, J.

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